

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.2, MUMBAI
PRESENT
S. S. GARG
Presiding Officer**

REFERENCE NO.CGIT-2/48 of 2006

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF
BHARAT PETROLEUM CORPORATION LTD.**

The General Manager HRS
Bharat Petroleum Corporation Ltd.
Bharat Bhavan 4 & 6
Currimbhoy Road
Ballard Estate
Mumbai 400 038.

AND

THEIR WORKMAN.

Shri S. N. Kadam
Vasant Sagar Apartment
Block No.1
Thiba Palace Road
Ratnagiri 415 612.

APPEARANCES:

FOR THE EMPLOYER : Mr. R. S. Pai,
Advocate.

FOR THE WORKMAN : Mr. Arshad Shaikh,
Advocate.

Mumbai, dated the 9th September, 2021.

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No.L-30011/48/2006-IR (M), dated 29.08.2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section

2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s. BPCL, Mumbai in dismissing Shri S.N. Kadam from employment w.e.f. 19/11/2004 is legal and justified? If not, to what relief the workman is entitled for?”

2. After receipt of the Reference from the Ministry both the parties were served with the notices. In response to the notice the second party workman submitted his statement of claim at Ex.7. According to him he was serving with the first party since March, 1989 till 19/11/2004. He joined the first party company as a General Operator, Grade-I at Sewri Benzine location. He had applied for promotion and he was sent for training from May, 2000 to 31/7/2000 as per letter dated 19/4/2000. He completed training successfully. Thereafter he worked in Sewri Benzine. By an email dated 29/9/2000 he was directed to report Ratnagiri Import Terminal on 9/10/2000 for training purpose. During the job training from 9/10/2000 the second party was authorized to stay in a hotel and claim the reimbursement as per his entitlement. Accordingly second party reported Ratnagiri Import Terminal on 9/10/2000 and started his training. Following the “on-the job training” he was promoted as Technician w.e.f. 2/4/2001 and was advised to report to Dy. Manager, Ratnagiri L.P.G.Terminal on 2/4/2001 for further instructions. However he received the intimation late as he was on training till 8/6/2001.

3. Second Party was punctual and regular on duty. He had gone for training to Ratnagiri from Mumbai. He was not having his own residential accommodation at Ratnagiri, therefore, in order to attend the training regularly he had to stay in Ratnagiri. He stayed in two Hotels i.e. Hotel Mangala and Hotel Alpha for different periods. He had paid all the Hotel bills and had incurred other expenses which were to be reimbursed from first party. He submitted two claims of T.A/D.A dated 11/12/2000 for Rs.27,524/- in respect of stay in Hotel Alpha and claim dated 1/6/2001 of Rs.54,060/- in respect of stay in Hotel Mangala. Both the claims were submitted alongwith Hotel bills. The first party had not passed the bill of Rs.54,060/-. On the other hand they had issued a charge sheet to the second party for the misconduct. The charges were leveled against him that he attempted to secure in a fraudulent manner pecuniary advantage from the Corporation. The second charge leveled against second party was fraud or dishonesty in connection with Corporation business or property, third charge was committing an act subversive of discipline. The inquiry was conducted from 31/5/2002 to 16/9/2002. Mr.M.N.Rao was the Enquiry Officer. Mr.J.S. Jironekar was the Presenting Officer. It was alleged that the second party without staying in Hotel Mangala and Hotel Alpha has produced false bills of the said two Hotels and committed fraud and attempted to take pecuniary advantage fraudulently and committed fraud and dishonesty in connection with Corporation business. However the material witnesses i.e. the Managers of both the Hotels were not examined, naturally, they were not available for cross

examination causing grave prejudice to the workman. It amount to breach of natural justice. The Presenting Officer was well aware that the bills submitted by second party of Hotel Mangala and Hotel Alpha were genuine. Hence, he suppressed the material witnesses. The second party did not get reasonable opportunity to defend himself. Ex.12 has no value in the enquiry. There is material evidence on record to show that bills of stay of second party were genuine. Presenting Officer failed to produce original as well as legible copies of every documents produced in the enquiry proceeding inspite of request to that effect. The Enquiry Officer did not consider the evidence properly. His findings are perverse and deserve to be set aside. The findings of the Enquiry Officer are based on conjectures and surmises; they are not based on the evidence. Therefore, conclusion and findings of the Enquiry Officer are perverse. After receipt of the report and findings of the Enquiry Officer the second party workman made representation which was ignored. It was wrongfully alleged that workman had not stayed in the two Hotels. The management attempted to deprive the entitlement of the workman in order to victimize him. By letter dated 3/12/2004 the first party sent the order of dismissal of second party with immediate effect. The punishment was imposed to victimize the second party, no misconduct was proved against him, punishment was shockingly disproportionate. Therefore, the second party workman preferred appeal. The Appellate Authority dismissed his appeal. Therefore, second party approached to A.L.C.(C). As conciliation failed on the report of A.L.C. (C) the Labour

Ministry sent the Reference to this Tribunal. The second party therefore prays that the enquiry be held not fair and proper and findings of the Enquiry Officer be declared as perverse. He also prays to direct the management to reinstate him with continuity of service and full back wages from 19/11/2004. He also prays that it be declared that he is entitled for full reimbursement of the expenses incurred during the "on-the job training" at Ratnagiri and also prays for costs.

4. The First party management has resisted the claim vide its Written Statement at Ex.8. According to them, the workman was charge sheeted for a serious misconduct for submitting fake and bogus Hotel bills and seeking reimbursement to the tune of Rs.54,060/- . The said charges were proved in the departmental enquiry. Sufficient opportunity was given to the workman to defend himself. The charges were proved against him. The punishment is proportionate to the proved misconduct. Therefore, according to them the Reference deserves to be rejected. The workman was on "on job training" from 9.10.2000 and he was entitled to stay in Hotel as applicable to his grade. The Corporation is not aware as to whether workman has his relatives or any residential accommodation at Ratnagiri. According to them the workman has not stayed in Hotel Mangala and Hotel Alpha. He has not paid the Hotel bills of those Hotels. He has obtained fake and bogus bills to the tune of Rs.54,060/-. Therefore, Corporation has issued charge sheet as per the standing order. On investigation it was found that workman did not actually stay in the said Hotels and the bill

of Rs.54,060/- was fake and bogus. Therefore, the first party initiated departmental enquiry against the workman. Mr.M.N.Rao the then Territory Manager was appointed as Enquiry Officer. Mr. R.S.Raut was the Defense Counsel. Sufficient opportunity was given to the workman to defend himself. He submitted his written submission during the course of enquiry. They denied that any material witness was suppressed by the Corporation. MW-1 was the direct witness to the case as Mr.Jairam met the Hotel Manager and obtained copies of Lodging Register with regard to the claim period for reimbursement of Hotel bills of the workman. The oral evidence of Mr.Jairam brings out these facts on record. Witness has not admitted stay of the workman in Hotel at Ratnagiri. It was not necessary to examine witness Mr.Ajit Prasad and Mr.Narendra Dhawale. They denied that the legible copies were not provided to the workman. The management witness established that workman never stayed in Hotel Mangala in Room No.104 during the period from 9.10.2000 to 8.6.2001. They denied all the allegations. According to them the enquiry was fair and proper. They denied that Enquiry Officer has violated the principles of natural justice. The findings of the Enquiry Officer are based on the evidence on record. They are not perverse. They denied all the allegations that he was victimized and terminated from the services. According to them as the Enquiry Officer found him guilty of serious misconduct of fraud he was terminated from the services. Before the order of termination opportunity was given to him to say in respect of the report and findings of the Enquiry Officer. After considering the report and

explanation of the workman the management terminated the services of the workman as they have lost confidence in the workman. The punishment is proportionate to the misconduct. Therefore they pray that the Reference be dismissed with costs.

5. Following are the issues framed by my Ld. Predecessor at Ex.10. I record my findings thereon for the reasons to follow:

Issues	Findings
1) Is inquiry fair and proper?	Yes.
2) Is finding perverse?	No.

REASONS

6. My predecessor decided this matter first time on 05.03.2012. Hon'ble High Court please to remand back this case by set asiding Award Part – I dated 07.12.2012 in Writ Petition No. 9276 of 2012 (Civil Appellate Jurisdiction) in the case of BPCL V/s. S.N. Kadam & Ors. by directing that this tribunal decide this matter afresh. Heard arguments on the both side. Both side files written submission along with case laws. Firstly I want to deal the Issue No.1.

Finding regarding Issue No.1 :

7. On behalf of workman it was argued that management relied on conjecture and surmise evidence without showing legal proof in departmental enquiry proceeding. Jist of the argument is that

1.Management in departmental enquiry witness list show 3 witnesses but examined only 1 witness, 2.Affidavit filed by the

Hotel owner is not cross-examined during departmental enquiry,3. Copies of the documents supplied during departmental enquiry which is not illegible but management did not supply clear and legible copy even demand of workman i.e. D.C/CSE and 4.Also argued that Inquiry Officer report Ex.14 is not proper and also argued that proper opportunity not provided to the workman so previous order of this tribunal good and reasoned order. He relied following case laws.

1. Punjab Land Development & Reclamation Corpn. Ltd. V/s. The P.O., Labour Court – 1990 (II) CLR 1 S.C. 2. General Manager (P) Punjab & Sind Bank V/s. Daya Singh – AIR 2010 SCW 5447. 3. Antony Philip D'Souza V/s. Air India – 1992 (2) LLJ 507 – Bom. 4. Hardwari Lal V/s. State of U.P. – 2000 (I) CLR 73. 5. Gajanan s/o. Shamrao Thakre V/s. MRTC. – 2000 (III) CLR 99. 6. Chief Security Officer, S.R. Railway V/s. Rampati Singh 2001 (II) CLR 100. 7. Ravindra R. Tondulkar V/s. Municipal Corpn. of Greater Mumbai. 8. Amar Chakravarty V/s. Maruti Suzuki India Ltd. – 2010 (14) SCC 471. 9. Hotel Oberoi Towers V/s. Gopal Naidu – 2002 (4) Bom. C.R. 58.

8. On the contrary on behalf of management Learned advocate argued that it is onus lying on management to prove prima-facie charges against the workman. It is suit bill of the management to decide how many witnesses examined. Nobody is compelled to management to examine such number of witnesses. He also argued

that in departmental proceedings workman with his Defence Representative is present in whole proceedings and proper opportunity was given to the workman to defend his case but he fails to examine himself before the Inquiry Officer or even did not examine any person in support of his defence. According to him, illegibility of the document, this argument is baseless because court, as well as counsel, Inquiry officer, disciplinary authority and Hon'ble High Court read these documents. They did not say these documents are not readable. He also argued that so-called 'illegible documents' is concerned, workman have special knowledge regarding these documents because according to him he residing in that hotel and also argued in short that

1.This court is not a Appellate court of the Inquiry Officer. So this court has limited jurisdiction, only see the Inquiry report, not proceeding. 2. He has no knowledge whether hotel generally maintained 2 registers one for legal purpose other for duplicate for earning black money. 3. It is duty of the workman to call out owner of the hotel or to pray for cross examine on affidavit. 4. Inquiry report is based on proper reasoned report. He relying following case laws.

1. BPCL V/s. S.N. Kadam – Order dt. 7.12.12 in AS WP No. 9276. 2. Sur Enamel and Stamping Works Ltd. V/s. Their Workmen – AIR 1963 SCC 1914]. 3. Saini R.S. V/s. State of Punjab & Ors. – 1999 (II) LLJ 1415 SC. 4. Suryaban Maruti Avhad V/s. Mahindra & Mahindra Ltd. – 2011 (III) LLJ 339 Bom.

5. Narang Latex & Dispersions Pvt. Ltd. V/s. S.V. Suvarna (Mrs.) & Anr. – 1994 (II) CLR 51 Bom. 6. State of Haryana & Anr. V/s. Ratan Singh 1982 (1) LLJ 46 SC. 7. Divisional Controller KSRTC V/s. A.T. Mane 2005 (III) SCC 254 SC. 8. M/s. Banaras Electric Light and Power Co. Ltd. V/s. The Labour Court (1972 (II) LLJ 328). 9. Union of India V/s. Sardar Bahadur (1972) (1) LLJ – Page 1) S.C. 10. Bank of India V/s. T. Jogram – 2007 (7) SCC Page 236. 11. Administrator, Union Territory of Dadra & Nagar Haveli V/s. Gulabhia M. Ltd. – 2010 (II) CLR Page 501. 12. South Indian Cashew Factories workers' Union V/s. Kerala State Cashew Devl. Corpn. Ltd. – 2006 (5) SCC 201. 13. M.L. Singla V/s. Punjab National Bank & Anr. – (2019) 1 SCC (L&S) 805. 14. Divisional Controller, MSRTC, Latur V/s. Bhushan Jagannathrao Bulbule, Latur – WP No. 2730 of 2004 – dated 7.5.18 – Hon'ble H.C. Bombay [Aurangabad Bench].

9. Now I want to see the legal position.

1. Punjab Land Development & Reclamation Corpn. Ltd. V/s. The P.O., Labour Court – 1990 (II) CLR 1 S.C. – It is held that “Ratio Decidendi – Ascertainment of the principle on which the case was decided – What constitutes binding precedent is the ratio decidendi, the principle upon which the case was decided.”

2. General Manager (P) Punjab & Sind Bank V/s. Daya Singh – AIR 2010 SCW 5447 – It is held that “Strict rules of evidence are not applicable to departmental enquiry proceedings. The

only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings.”

3. Antony Philip D’Souza V/s. Air India – 1992 (2) LLJ 507 – Bom. It is held that “Upon evidence which was wholly ambiguous and janus-faced, without any clinching factor to show the probability, the Enquiry Committee has recorded a finding of guilt against the petitioner.”

4. Hardwari Lal V/s. State of U.P. – 2000 (I) CLR 73. It is held that “there was no proper enquiry held by the authorities and on this short ground the order of dismissal passed against the appellant.

5. Gajanan s/o. Shamrao Thakre V/s. MRTC. – 2000 (III) CLR 99. It is held that “find is recorded that Labour court should have given opportunity to the Corporation to lead evidence to justify its action – Whether remand for the purpose would be proper – Held: Alleged misconduct.”

6. M.L. Singla V/s. Punjab National Bank & Anr. – (2019) 1 SCC (L&S) 805. It is held that “Firstly, the appellant was given

full opportunity at every stage of the proceedings which he availed; secondly, he never raised any objection complaining of any prejudice of any nature being caused to him before the enquiry officer; thirdly, he received all the papers / documents filed and relied upon by Respondent.....lastly, the enquiry officer appreciated the evidence and submitted his reasoned report running in several pages holding the appellant guilty of both the charges.”

7. Divisional Controller, MSRTC, Latur V/s. Bhushan Jagannathrao Bulbule, Latur – WP No. 2730 of 2004 – dated 7.5.18 – Hon'ble H.C. Bombay [Aurangabad Bench]. It is held that “the fairness of the Enquiry Officer’s findings is to be assessed purely on the basis of his conclusions and it has to be seen, by going through the evidence recorded in the enquiry, as to whether, the findings of the Enquiry Officer are supported by reasons and whether such conclusions are on the basis of the evidence recorded. If there is some evidence on record on the basis of which, the Enquiry Officer has drawn his conclusions after preponderance on the principles.”

10. Now I want to see factual matrix as well as evidence of this case. On behalf of management during departmental enquiry he examined Mr. M.S. Jayaram but nobody examined on behalf of the workman. In the court proceeding on behalf of management he examined MW-1 Shri Murlidhar Nagaraja who admitted some facts in

cross-examination that no separate letter was given by the Presenting Officer by dropping any witness which is named in witness list because the way that all matter covered by this witness, he also admitted that Presenting Officer in departmental enquiry filed affidavit of witness No.3 but worker or management did not pray for cross-examination, he did not say whether paper filed in the proceeding before court are same as in departmental enquiry. He also admitted in para – 8 that some Xerox copies Ex.15 are repeated and he also admitted that workman during that period of enquiry has no house at Ratnagiri and prosecution case is not that workman was absent from Ratnagiri during relevant period and also admitted that management has not put the case that workman stayed elsewhere during that period.

11. Now I want to see the admission of the workman in court statement. In his chief examination he support his version of statement of claim but in his cross examination he admitted that he received charge sheet on 13.12.01, enquiry was initiated, his defence representative is Mr. Raut, copy of enquiry report received by him and he also sent representation against the report & finding of enquiry officer before disciplinary authority. He also admitted that he was removed from services. He also admitted that as per standing order he was given opportunity to defend his case.

12. On behalf of management MW-1 was examined in court proceedings as an inquiry officer who conducted enquiry and gave report Ex.14. On behalf of workman they take some defence as copies

supplied to the workman was not illegible, 2 witnesses not examined by the management, in departmental enquiry, affidavit of witness No.3 is not cross examined by departmental enquiry proceedings and his finding is based on conjecture evidence. But this witness is denied all these defence by asserting that is the duty of the presenting officer to decide how many witnesses were examined in departmental enquiry. It is the job of presenting officer and not the job of enquiry officer. He also admitted that some documents are repeated but he also admitted that in his knowledge workman have no own house at Ratnagiri. In this way he remain un-rebutted in his cross examination. Nothing in his cross examination show that he have any enmity with workman or any pro towards the management.

13. The workman WW-1 in his chief examination supported his statement of claim but he admitted some facts which is narrated by me in above discussion but he also admitted that Defence Counsel used to explain me the contents in the document and copies of the documents were given to me. Proceedings bear my signature and signature of Defence Counsel.”

14. In this way he did not raise any such point which show that so-called ‘illegible documents’ he or his defence representative did not understand these documents. It also appears that same defence is not taken before the management witness Mr. M.S. Jayaram in departmental enquiry.

15. On going defence taken by the workman it appears that it is correct to say that it is the duty of the presenting officer how many witnesses examined in the departmental enquiry and enquiry officer did not compel to presenting officer or defence representative to call any witness but in this case workman neither examined himself in departmental enquiry nor call out any witnesses i.e. owner of the hotel. It means in my humble opinion burden of proof shifted to the workman to prove that these registers are false and bogus or it is his bill submitting before department in TA/DA is genuine. He have opportunity to negate this evidence but he did not avail so adverse inference can be drawn against the workman.

16. As far as second defence is concerned Leaned advocate of workman argued that even for a moment we think he is not residing at Ratnagiri, it is not correct then some presumption can be drawn that he residing somewhere but I am not agree with the argument of workman because this enquiry conducted against the bogus bill not for where he residing.

17. Next argument of the workman counsel is that hotels are generally maintaining 2 types of registers one for taxation purpose or 2nd for black money. I am not agree with this argument because court or enquiry office cannot rely conjecture or surmises evidences because it create some type of disorder in society.

18. Next argument of the workman counsel is that enquiry officer did not show genuineness of these documents because he relied on

Xerox copies of these documents. I do not agree with this argument because by reliable evidence or defence it does not show that these documents created falsely by the management or presenting officer or enquiry officer have some sort of enmity with this workman.

19. On going above discussion I come to the conclusion that management prove his case regarding fairness of enquiry. So Issue No.1 is answered accordingly in affirmative.

Findings regarding Issue No.2.

20. On behalf of workman defence taken to the enquiry officer in court evidence in above discussion I found that these defence are not sustainable in this case. On going the enquiry report Ex.14, it appears that enquiry officer come to the conclusion after appreciating evidence with documents. His report based on proper observations and finding of the enquiry officer is proper in my view which is not based on conjecture or surmises evidence. So I held that findings of the enquiry officer are not found to be perverse so this issue is answered accordingly in negative.

21. On going through above discussion with touch stone of above case laws, I observe that in departmental enquiry during conduction of enquiry and also observe that he given proper and sufficient opportunity to defend his case. So I do not interfere in findings of the enquiry officer.

22. So case is fixed for final arguments on quantum of punishment. Parties wants to produce any documentary or oral evidence may produce on next date otherwise case heard on merits on quantum of punishment.

Sd/-

(S. S. GARG)
Presiding Officer/Link Officer
CGIT-2, Mumbai

Date: 09/09/2021